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***Attorneys for Plaintiff and the Proposed Class***

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MICHELE HUNT, on behalf of herself,  
and all others similarly situated,

Case No.:

Plaintiff,

V.

## SOUTHERN CALIFORNIA EDISON.

**Defendant.**

**CLASS ACTION**

**CLASS ACTION COMPLAINT  
FOR DAMAGES AND  
INJUNCTIVE RELIEF  
PURSUANT TO THE  
TELEPHONE CONSUMER  
PROTECTION ACT, 47 U.S.C.  
§§ 227 *et seq.***

## DEMAND FOR JURY TRIAL

## INTRODUCTION

2       1. Michele Hunt (“Plaintiff”) brings this Class Action Complaint for  
3 damages, injunctive relief, and any other available legal or equitable remedies,  
4 resulting from the illegal actions of Southern California Edison (“SCE” or  
5 “Defendant”), in negligently, and/or willfully contacting Plaintiff through telephone  
6 calls on Plaintiff’s cellular telephone, in violation of the Telephone Consumer  
7 Protection Act, 47 U.S.C. §§ 227 *et seq.*, (“TCPA”), thereby invading Plaintiff’s  
8 privacy. Plaintiff alleges as follows upon personal knowledge as to her own acts and  
9 experiences, and, as to all other matters, upon information and belief, including  
10 investigation conducted by her attorneys.

## NATURE OF THE ACTION

12        2.        Southern California Edison is the primary electricity supply company  
13 for much of California. However Southern California Edison also pushes incentives  
14 offered through the California Solar Initiative by making unsolicited calls to  
15 individual's cellular phones without their prior express consent.

16       3.       The TCPA strictly forbids nuisance calls exactly like those alleged in  
17 this Complaint – intrusive phone calls to private cellular phones, placed to numbers  
18 obtained without the prior express consent of the call recipients.

19       4.       Southern California Edison's violations caused Plaintiff and members  
20 of the Class actual harm, including aggravation, nuisance, and invasion of privacy  
21 that necessarily accompanies the receipt of unsolicited phone calls, as well as the  
22 violation of their statutory rights.

23       5. Plaintiff seeks an injunction stopping Southern California Edison from  
24 making unsolicited phone calls, as well as an award of statutory damages under the  
25 TCPA, together with costs and reasonable attorneys' fees.

#### JURISDICTION AND VENUE

27       6.       Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff  
28 seeks up to \$1,500 in damages for each call in violation of the TCPA, which, when

1 aggregated among a proposed class numbering in the tens of thousands, exceeds the  
2 \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiff alleges a  
3 national class, which will include class members residing in different states than that  
4 of Defendant, providing jurisdiction under 28 U.S.C. § 1332(d)(2)(A). Therefore,  
5 both elements of diversity jurisdiction under the Class Action Fairness Act of 2005  
6 (“CAFA”) are present, and this Court has jurisdiction.

7 7. This Court has federal question subject matter jurisdiction under 28  
8 U.S.C. § 1331, as the action arises under the TCPA, a federal statute.

9 8. Venue is proper in the United States District Court for the Central  
10 District of California pursuant to 28 U.S.C. §§ 1391(b) and 1441(a) because  
11 Defendant, at all times herein mentioned, was doing business in the County of Los  
12 Angles State of California and is located in Rosemead, California.

### 13 PARTIES

14 9. Plaintiff Michele Hunt is, and at all times mentioned herein was, a resident of  
15 the State of California. She is, and at all times mentioned herein was a “person” as  
16 defined by 47 U.S.C. § 153 (39).

17 10. Defendant Southern California Edison maintains its principal place of  
18 business at 2244 Walnut Grove Avenue, Rosemead, California 91770. At all times  
19 mentioned herein, Southern California Edison was a “person” as defined by 47  
20 U.S.C. § 153 (39).

21 11. Southern California Edison actively conducted and continues to  
22 conduct telemarketing campaigns for the purpose of soliciting the California Solar  
23 Initiative.

24 12. Plaintiff alleges that at all times relevant herein Defendant conducted  
25 business in the State of California and in the County of Los Angeles, and within this  
26 judicial district.

**THE TELEPHONE CONSUMER PROTECTION ACT OF 1991 (TCPA),**  
**47 U.S.C. §§ 227 *et seq.***

13. In 1991, Congress enacted the Telephone Consumer Protection Act, 47 U.S.C. § 227 (TCPA),<sup>1</sup> in response to a growing number of consumer complaints regarding certain telemarketing practices.

14. The TCPA regulates, among other things, the use of automated telephone equipment, or “autodialers.” Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.<sup>2</sup>

15. According to findings by the Federal Communication Commission (“FCC”), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.<sup>3</sup>

<sup>1</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. §§ 201 *et seq.*

<sup>2</sup> 47 U.S.C. § 227(b)(1)(A)(iii).

<sup>3</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (F.C.C. 2003) (“2003 FCC Order”).

16. Under the TCPA and pursuant to the FCC's January 2008 Declaratory Ruling,<sup>4</sup> the burden is on Defendant to demonstrate that Plaintiff provided prior express consent within the meaning of the statute.

17. Further, as of October 16, 2013, express written consent is required to many any such telemarketing calls.<sup>5</sup> The express written consent must be signed and be sufficient to show the consumer received clear and conspicuous disclosure of the significance of providing consent and must further unambiguously agree to receive future phone calls.<sup>6</sup>

## **FACTUAL ALLEGATIONS**

18. Commencing no later than September of 2016, Plaintiff began receiving a number of unsolicited phone calls to her wireless phone, for which Plaintiff provided no consent to call.

19. In total, Plaintiff has received approximately 7 phone calls to her cellular phone.

20. Most of the incoming calls from Southern California Edison received by Plaintiff came from the following numbers: 800-655-4555 and 800-684-8123.

21. During the phone calls to Plaintiff's cellular telephone, there would be a short delay before Plaintiff would be connected to a live representative. Once connected with a live representative of Defendant, Defendant would solicit Plaintiff,

<sup>4</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C.R. 559, 2008 WL 65485 (F.C.C. Jan. 4, 2008) (“2008 FCC Order”).

<sup>5</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 27 F.C.C.R. 1830, 1837 ¶ 18, 1839 ¶ 20, 1858 ¶ 71 (F.C.C. Feb. 15, 2012) (“2012 FCC Order”).

<sup>6</sup> 2012 FCC Order at 1844 ¶ 13; see also *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 955 (9th Cir. 2009); *Gutierrez v. Barclays Grp.*, 2011 WL 579238, at \*2 (S.D. Cal. Feb. 9, 2011).

the call recipient, to schedule an appointment to have an agent evaluate her home for solar.

22. Numerous times, during these same phone calls, Plaintiff would instruct Defendant to stop calling and that she was not interested in setting up an appointment. Despite Plaintiff's efforts to stop Defendant's calls, Plaintiff continued to receive unsolicited phone calls from Defendant.

23. These unsolicited phone calls placed to Plaintiff's wireless telephone were placed via an "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C. § 227 (a)(1) and by using "an artificial or prerecorded voice" system as prohibited by 47 U.S.C. § 227 (b)(1)(A), which had the capacity to produce or store numbers randomly or sequentially, and to dial such numbers, to place telephone calls to Plaintiff's cellular telephone.

24. The existence of the ATDS is further evidenced by the sheer volume of calls received by Plaintiff and Class Members, as such calls would only be made using automated equipment.

25. The telephone number that Defendant, or its agents, called was assigned to a cellular telephone service for which Plaintiff incurred a charge for incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

26. These telephone calls constitute calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

27. Plaintiff did not provide Defendant or its agents prior express consent to receive unsolicited phone calls pursuant to 47 U.S.C. § 227 (b)(1)(A).

28. These telephone calls by Defendant or its agents therefore violated 47 U.S.C. § 227(b)(1).

## CLASS ACTION ALLEGATIONS

29. Plaintiff brings this action on behalf of herself and on behalf of all others similarly situated (“the Class”).

1       30. Plaintiff represents, and is a member of the Class, consisting of all  
2 persons within the United States who: (1) received a telephone call from Defendant  
3 or its agents; (2) on his or her cellular telephone number; (3) through the use of any  
4 automatic telephone dialing systems or artificial or pre-recorded voice system as set  
5 forth in 47 U.S.C. § 227(b)(1)(A)(3); and (4) where Defendant has no record of prior  
6 express consent for such individual to make such call, within four years prior to the  
7 filing of the Complaint through the date of final approval.

8       31. Defendant and its employees or agents are excluded from the Class.

9       32. Plaintiff does not know the exact number of members in the Class, but  
10 believes the Class members number in the hundreds of thousands, if not more. Thus,  
11 this matter should be certified as a Class action to assist in the expeditious litigation  
12 of this matter.

13       33. Plaintiff and members of the Class were harmed by the acts of  
14 Defendant in at least the following ways: Defendant, either directly or through its  
15 agents, illegally contacted Plaintiff and the Class members via their cellular  
16 telephones by using unsolicited telephone calls, thereby causing Plaintiff and the  
17 Class members to incur certain cellular telephone charges or reduce cellular  
18 telephone time for which Plaintiff and the Class members previously paid, and  
19 invading the privacy of said Plaintiff and the Class members. Plaintiff and the Class  
20 members were damaged thereby.

21       34. This suit seeks only damages and injunctive relief for recovery of  
22 economic injury on behalf of the Class and it expressly is not intended to request  
23 any recovery for personal injury and claims related thereto. Plaintiff reserves the  
24 right to expand the Class definition to seek recovery on behalf of additional persons  
25 as warranted as facts are learned in further investigation and discovery.

26       35. The joinder of the Class members is impractical and the disposition of  
27 their claims in the Class action will provide substantial benefits both to the parties  
28

1 and to the Court. The Class can be identified through Defendant's records or  
2 Defendant's agents' records.

3       36. There is a well-defined community of interest in the questions of law  
4 and fact involved affecting the parties to be represented. The questions of law and  
5 fact with respect to the Class predominate over questions which may affect  
6 individual Class members, including the following:

- 7           a. Whether, within the four years prior to the filing of this Complaint,  
8           Defendant or its agents placed telephone calls without the recipients'  
9           prior express consent (other than a telephone call made for emergency  
10          purposes or made with the prior express consent of the called party)  
11          to a Class member using any automatic telephone dialing system or  
12          an artificial or pre-recorded voice system, to any telephone number  
13          assigned to a cellular telephone service;
- 14           b. Whether the equipment Defendant or its agents used to make the  
15          telephone calls in question was an automatic telephone dialing system  
16          as contemplated by the TCAP;
- 17           c. Whether Defendant or its agents systematically made telephone calls  
18          to persons featuring an artificial or pre-recorded voice;
- 19           d. Whether Defendant or its agents systematically made telephone calls  
20          to persons who did not previously provide Defendant with their prior  
21          express consent to receive such telephone calls;
- 22           e. Whether Plaintiff and the Class members were damaged thereby, and  
23          the extent of damages for such violations; and
- 24           f. Whether Defendant and its agents should be enjoined from engaging  
25          in such conduct in the future.

26       37. As a person that received at least one unsolicited telephone call to her  
27          cell phone without prior express contest, Plaintiff is asserting claims that are typical  
28

1 of the Class. Plaintiff will fairly and adequately represent and protect the interests  
2 of the Class in that Plaintiff has no interest antagonistic to any member of the Class.

3 38. Plaintiff and the members of the Class have all suffered irreparable  
4 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class  
5 action, the Class will continue to face the potential for irreparable harm. In addition,  
6 these violations of law will be allowed to proceed without remedy and Defendant  
7 will likely continue such illegal conduct. Because of the size of the individual Class  
8 member's claims, few, if any, Class members could afford to individually seek legal  
9 redress for the wrongs complained of herein.

10 39. Plaintiff has retained counsel experienced in handling class action  
11 claims and claims involving violations of the Telephone Consumer Protection Act.

12 40. A class action is a superior method for the fair and efficient adjudication  
13 of this controversy. Class-wide damages are essential to induce Defendant to  
14 comply with federal law. The interest of Class members in individually controlling  
15 the prosecution of separate claims against Defendant is small because the maximum  
16 statutory damages in an individual action for violation of privacy are minimal.  
17 Management of these claims is likely to present significantly fewer difficulties than  
18 those presented in many class claims.

19 41. This class action is appropriate for certification because Defendant has  
20 acted or refused to act on grounds generally applicable to the Class as a whole,  
21 thereby requiring the Court's imposition of uniform relief to ensure compatible  
22 standards of conduct toward the Class members and making final injunctive relief  
23 appropriate with respect to the Class as a whole. Defendant's practices challenged  
24 herein apply to and affect each of the Class members uniformly. Plaintiff's challenge  
25 to those practices hinges on Defendant's conduct with respect to the Class as whole,  
26 not on facts or law applicable only to Plaintiff.

## **FIRST CAUSE OF ACTION**

## **NEGLIGENCE VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

47 U.S.C. §§ 227 ET SEQ.

4 42. Plaintiff incorporates by reference all of the above paragraphs of this  
5 Complaint as though fully stated herein.

6       43.     Each such telephone call described herein was made using equipment  
7 that, upon information and belief, had the capacity to store or produce telephone  
8 numbers to be called, using a random or sequential number generator, and to dial  
9 such numbers. By using such equipment, Defendant was able to in effect make  
10 hundreds or thousands of phone calls simultaneously to lists of thousands of  
11 consumers' wireless phone numbers without human intervention.

12       44. The foregoing acts and omissions by Defendant and its agents  
13 constitute numerous and multiple negligent violations of the TCPA, including but  
14 not limited to each of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

15       45.      As a result of Defendant's, and Defendant's agents', negligent  
16 violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class are entitled to an award  
17 of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.  
18 § 227(b)(3)(B).

19       46. Plaintiff and the Class are also entitled to and seek injunctive relief  
20 prohibiting such conduct in the future.

## **SECOND CAUSE OF ACTION**

# **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

47 U.S.C. §§ 227 ET SEQ.

25       47. Plaintiff incorporates by reference the above paragraphs 1 through 43  
26 inclusive, of this Complaint as though fully stated herein.

27       48.     Each such telephone call was made using equipment that, upon  
28 information and belief, had the capacity to store or produce telephone numbers to be

called, using a random or sequential number generator, and to dial such numbers. By using such equipment, Defendant was able to in effect make hundreds or thousands of phone calls simultaneously to lists of thousands of consumers' wireless phone numbers without human intervention.

49. The foregoing acts and omissions by Defendant and its agents constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each of the above-cited provisions of 47 U.S.C. §§ 227 *et seq.*

50. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class are entitled to treble damages, as provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

51. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## PRAYER FOR RELIEF

**Wherefore**, Plaintiff respectfully requests the Court to grant Plaintiff and the Class members the following relief against Defendant:

## **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF THE TCPA,**

47 U.S.C. §§ 227 ET SEQ.

52. As a result of Defendant's, and Defendant's agents', negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

53. Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff seeks injunctive relief prohibiting such conduct in the future.

54. Any other relief the Court may deem just and proper.

1                   **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**  
2                   **VIOLATION OF THE TCPA, 47 U.S.C. §§ 227 ET SEQ.**

3       55. As a result of Defendant's, and Defendant's agents', willful and/or  
4 knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each  
5 Class member treble damages, as provided by statute, up to \$1,500.00 for each and  
6 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

7       56. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such  
8 conduct in the future.

9       57. Any other relief the Court may deem just and proper.

10                  **JURY DEMAND**

11                  Plaintiff hereby demands a trial by jury on all issues so triable.

12                  Dated: January 17, 2017

13                  \_\_\_\_\_  
14                  /s/ *Ronald A. Marron*

15                  By: Ronald A. Marron

16                  **LAW OFFICES OF RONALD A.  
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